

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG

RICHARD DIRTING,

Petitioner,

v.

CIVIL ACTION NO. 3:09-CV-82
CRIMINAL ACTION NO. 3:08-CR-49
(BAILEY)

UNITED STATES OF AMERICA,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION
THAT § 2255 MOTION BE DENIED

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge James E. Seibert. Pursuant to this Court's Local Rules, this action was referred to Magistrate Judge Seibert for submission of a proposed report and a recommendation ("R & R"). Magistrate Judge Seibert filed his R & R on June 2, 2010 [Crim. Doc. 125 / Civ. Doc. 4]. In that filing, the magistrate judge recommended that this Court deny the petitioner's application under 28 U.S.C. § 2255 [Crim. Doc. 24 / Doc. 1] because the claims are barred as waived.

Pursuant to 28 U.S.C. § 636 (b) (1) (c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1);

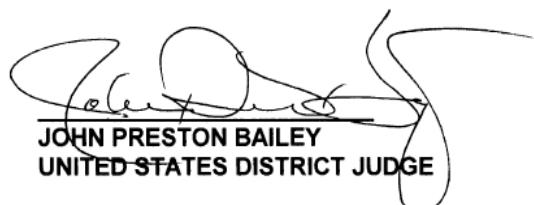
Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); **United States v. Schronce**, 727 F.2d 91, 94 (4th Cir. 1984). Objections to Magistrate Judge Seibert's R & R were due within fourteen (14) days of being served with a copy of the same, pursuant to 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72(b). Neither party filed objections to the R & R. Accordingly, this Court will review the report and recommendation for clear error.

Upon careful review of the report and recommendation, it is the opinion of this Court that the magistrate judge's **Report and Recommendation [Crim. Doc. 125 / Civ. Doc. 4]** should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. Accordingly, the Court hereby **DENIES** the petitioner's application under 28 U.S.C. § 2255 **[Crim. Doc. 116 / Civ. Doc. 1]**, and **DISMISSES** it **with prejudice**. Additionally, the Government's Motion for Reconsideration of the Court's Order Filed on January 20, 2010 and for Summary Dismissal of Defendant's Motion Filed Under Title 28 U.S.C. § 2255 **[Crim. Doc. 119]** is **DENIED as moot**.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to all counsel of record and to mail a true copy to the *pro se* petitioner.

DATED: July 13, 2010.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE